

HOUSE No. 1842

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to uninsurance employment fraud.

PETITION OF:

NAME:

Michael J. Rodrigues

DISTRICT/ADDRESS:

8th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1836 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO UNINSURANCE EMPLOYMENT FRAUD.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 151A, as appearing in the 2002 Official Edition, is hereby amended by inserting after section
2 69D, the following section:—

3 Section 69E. In addition to any other remedy provided by this chapter, the commissioner may utilize the procedures
4 specified below for the collection of any outstanding obligation where: (1) the obligation has become final as
5 determined under section 69D; (2) the obligation arose as a result of the obligor's failure to knowingly and willfully
6 furnish accurate information concerning any material fact, including amounts of remuneration received; and (3) the
7 obligor has failed to satisfy the obligation or make payment arrangements acceptable to the commissioner within
8 thirty days after notice that such obligation has become final and is due.

9 (a) The commissioner may file with the clerk of the municipal court department of the city of Boston or in the
10 district court department in the judicial district where the obligor lives or is employed a certificate or a copy thereof
11 under the commissioner's official seal stating: the name and address of the obligor, the amount owed, including
12 interest and penalties assessed pursuant to subsection (a) of section 69, and in default, and that the obligation has
13 become final. The commissioner also shall provide information concerning the obligor's weekly benefit amount as
14 referenced in subsection (c).

15 (b) Upon receipt of the certificate specified in subsection (a), the clerk shall send written notice, first class mail, to
16 the obligor at the address listed in the certificate that the certificate has been filed and the clerk shall enter into the
17 judgment records of the court the name of the obligor mentioned in the certificate, the amount owed and in default
18 and the date such certificate is filed. The clerk shall issue an execution at the request of the commissioner or the
19 commissioner's agent or attorney, in the same manner as a duly entered judgment of the court. No filing fee shall be
20 paid by the commissioner for the filing of a certificate.

21 (c) Every judgment issued pursuant to subsection (b) shall include an assignment to the department of a portion of
22 the obligor's salaries, wages, earnings, or other periodic income, in an aggregate amount sufficient to comply with
23 the judgment as limited by section 34 of chapter 235. The periodic amount of the assignment shall be the lesser of
24 the obligor's weekly unemployment insurance benefit amount in effect at the time the obligation arose or the
25 maximum amount permitted by 15 USCA § 1673(a); provided, however, that where more than one weekly benefit
26 amount was in effect, the periodic amount shall be the lesser of the average of all such weekly benefit amounts or
27 such maximum amount; provided further, that the obligor may within ten days following the date of the mailing of a
28 notice of assignment petition the court for a modification. The court shall consider the amount owed, the income and
29 reasonable expenses of the obligor and other factors which the court finds to be relevant to the ability to repay the
30 amount owed.

31 (d) If an assignment is in effect under subsection (c) but cannot be implemented because obligor has no employer,
32 the obligor shall notify the commissioner as soon as employment is obtained and the commissioner shall transfer the
33 assignment to such employer.

34 (e) An employer shall send the amount required by the assignment to the commissioner within three days after the
35 day the obligor is paid. The employer may deduct from the obligor's earnings a sum not exceeding \$1 per pay period
36 as reimbursement for costs incurred and may submit to the commissioner one check covering all its employees
37 whose earnings are assigned along with a statement enumerating each employee's obligation and amount paid.

38 (f) The assignment shall begin on the first payment of income that occurs more than three days after the employer
39 receives notice of the assignment and shall continue until the obligor leaves that employment or the employer is
40 notified by the commissioner that the assignment should be terminated.

41 (g) When the obligor changes employers, the obligor shall notify the commissioner within three days after beginning
42 the new employment, and shall notify the new employer of the assignment. The commissioner shall then transfer the
43 assignment to the new employer.

44 (h) Assignments pursuant to this section shall terminate when the underlying obligation terminates and all arrears
45 are paid.

46 (i) If an employer fails to comply with an order of assignment executed pursuant to this section, the court may upon
47 report of the commissioner summon the employer to appear in court and show cause why he should not be held in
48 civil contempt for failure to obey said order.

49 (j) An employer shall not discipline, discharge, demote, suspend, threaten, harass, deny promotion to, or in any other
50 manner discriminate against an employee because of an assignment executed or threatened pursuant to this section.
51 Any employer who violates this section shall be liable in a civil action, action for contempt or other appropriate
52 proceeding to such employee for all wages and employment benefits lost by the employee from the time of the
53 unlawful discipline, suspension or discharge to the period of reinstatement.

54 (k) An employer who violates subsection (j) shall be liable for such damages or equitable relief as a court shall deem
55 appropriate, including reinstatement with the same seniority status such employee would have had but for the
56 discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special
57 damages sustained as a result of the discrimination. In addition, the defendant shall be required to pay litigation
58 costs and reasonable attorney's fees. An employee may bring an action in the appropriate superior court department
59 or the superior court department of Suffolk County for the relief provided in this subsection.